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SUITE 800
WASHINGTON DC 20005

MAILED
OCT 08 2010
OFFICE OF PETITIONS

In re Patent No. 7,648,763 : DECISION ON REQUEST
Heim et al. : FOR
Issue Date: 01/19/2010 : RECONSIDERATION OF
Application No. 10/509,178 : PATENT TERM ADJUSTMENT
Filed: 09/27/2004 : and
Atty Docket No. : NOTICE OF INTENT TO ISSUE
2732-146 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on July 19, 2010, which is being treated as a request for reconsideration under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by six hundred nineteen (619) days. For the reasons stated below, the petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by four hundred thirty-four (434) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred

thirty-four (434) days is **GRANTED to the extent indicated herein.**

As to the "B" delay period, the over three year period begins on September 29, 2007, the day after the date three years after September 28, 2004, the date the application commenced the national stage under 35 U.S.C. 371(b). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period ends on January 28, 2009, and is 488 days. See 35 U.S.C. 154(b)(1)(B)(i). Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On July 29, 2008, a notice of appeal was filed. On January 29, 2009, 184 days after the date the notice of appeal was filed, the RCE was filed. Accordingly, the excluded period for appeal is 184 days, and the "B" delay period is 304 (488 - 184) days.¹

The patent term adjustment at the time of issuance of the patent is 434 (255 days of Office delay + 304 days of over three years delay - 125 days of applicant delay) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District

¹ The Office notes that where a request for continued examination ("RCE"), has been filed, the period of appeal is only reduced if such appeal period occurred prior to the filing of the RCE. If no RCE has been filed, the period of appeal is reduced if it occurs at anytime during the pendency of application.

Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred thirty-four (**434**) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,648,763 B2

DATED : Jan. 19, 2010

DRAFT

INVENTOR(S) : Heim et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 364 days.

Delete the phrase "by 364 days" and insert - by 434 days--